

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

KEVIN W. WILLIAMS,)	
)	
Plaintiff,)	
)	
)	CIV-12-1093-D
v.)	
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social)	
Security Administration,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Plaintiff, who appears *pro se*, seeks judicial review pursuant to 42 U.S.C. § 405(g) of the final decision of Defendant Commissioner denying his applications for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 416(I), 423. Defendant has answered the Complaint and filed the administrative record (hereinafter TR___). The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). For the following reasons, it is recommended that the Complaint be dismissed without prejudice.

Plaintiff filed his Complaint in this action on October 3, 2012. (Doc. #1). On May 7, 2013, an Order was entered establishing a briefing schedule for the parties. Plaintiff was

directed to file his opening brief 45 days from the date of the Order. However, to this date, no brief has been filed by Plaintiff. As a result, the undersigned entered an Order to Show Cause on June 25, 2013, giving Plaintiff ten (10) days to show why this cause of action should not be dismissed due to his failure to prosecute his cause of action. As of this date, Plaintiff has taken no further action, and Plaintiff has not shown cause or asked the Court for an extension of time to respond to the Show Cause Order.

Pursuant to Fed. R. Civ. P. 41(b), a district court may dismiss an action, *sua sponte*, if “the plaintiff fails to prosecute or to comply with these rules or a court order.” Fed. R. Civ. P. 41(b); Olsen v. Mapes, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003)(finding that Rule 41(b), “has been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or court’s orders”). In this case, Plaintiff’s failure to comply with the Court’s Order or to prosecute his action warrants dismissal of the action without prejudice.

RECOMMENDATION

For the foregoing reasons, the undersigned recommends that the cause of action be dismissed without prejudice due to Plaintiff’s failure to prosecute his action. The parties are advised of their right to file an objection to this Report and Recommendation with the Clerk of this Court on or before August 6th, 2013, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656

(10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 16th day of July, 2013.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE